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# Mr. ROTHERHAM's Caſe

AT THE

## Committee of Elections and Priviledges, the Eighth of *December*,

Concerning the Election of St. *EDMUNDS-BURY*.

IT was agreed, that if all the Burgeſſes had right to Elect, then Sir *Thomas Cullum* deceaſed, and Mr. *Rotherham*, were duely Elected; but if a ſelect number onely, [had right by a Grant 12 *Jac.*] then Sir *Thomas Harvey* and Mr. *Jermyn* were duely Elected.

The firſt Queſtion was, Whether St. *Edmunds* is a Burrough by Preſcription?

To prove it ſo, was urged, That *H.* 1. granted to the Burgeſſes of the Burrough of *Bury* ſeveral Priviledges.

Four Writs to chuſe, upon which St. *Edmund* is indorſed among other Burroughs which ſend Burgeſſes, and a *Mandavi Ballivo* returned upon one, in 30 *Ed.* 1. and upon another 34 *Ed.* 1. *Prec. Edm.* among other Burroughs, and the like 21 *Ed.* 3. and the like 14 *Ed.* 3. but no Return; and Chriſt-Church in *Hampſhire*, and *Heydon* in *York-ſhire*, had but one Precept to either, and no Return till lately, and yet they ſend Burgeſſes.

1 *R.* 2. A Writ directed to the Alderman of St. *Edmunds*, which recites, That the *Guild-hall* was uſed for chuſing the Aldermen *per communitatem villæ*, and for collecting the Kings Tenths and Fifteens.

12 *Jac.* The King by his Letters-Pattens recites, That it is an ancient Burrough and had divers Priviledges by Preſcription.

*Cooke.* 1 *Inſt.* 109 *A.* It is named an ancient Burrough.

*Object.* There is no Return of Burgeſſes, till 18 *Jac.*

*Anſw.* Precepts (to chuſe) are Evidence of Right, and they could not chuſe after 5 *Ed.* 3. for in that year there was an Agreement between the Abbot and the men of *Bury* which recites, The Abbot had recovered 140000 *l.* againſt them in three Writs, of which at the Kings Entreaty, he forgave 122333 *l.* 13 *s.* 4 *d.* and forgave 10000 *l.* more upon condition they ſhould never reverſe the Judgments, nor implead the Jury, nor any others, by reaſon of the Premiſes; And if they nor their Succeſſors neither claim nor maintain any commun[illegible]ity in the ſaid [illegible]ill, then he forgave the Reſidue, being 7666 *l.* 6 *s.* 8 *d.* otherwiſe Execution might be ſued of 17666 *l.* 13 *s.* 4 *d.* and thereupon they acknowledge and grant for them and their Succeſſors, That they neither have nor claim, nor might for the future claim any Community: after which they durſt not meet as a Community, much leſs chuſe Burgeſſes. But this was reſolved in the Negative by 54 againſt 48.

2 *Queſt.* Admitting it be a Corporation newly created, whether the King by his Grant can reſtrain the number of Electors?

4 *Jac.* The King recites, That *Bury* is an ancient Burrough, and they ſhall be known by the name of *Alderman* and *Burgeſſes*; and that there ſhall be 12 capital Burgeſſes, and named them, and 24 of the Common-Council, and named them, and calls them *Primos & Modernos*, &c. and upon the death of any of them, the major part of the Survivers to chuſe others.

12 *Jac.* The King grants to the Alderman and Burgeſſes, That there ſhall be two Burgeſſes in the Burrough of St. *Edmunds*, and that the major part of Aldermen and capital Burgeſſes, and Burgeſſes of the Common-Council, ſhall chuſe them; and the Burgeſſes ſo choſen ſhall ſend, and they ſhall ſtay at the Parliament at the charges of the Burrough and Inhabitants. It was urged that the reſtrictive Clauſe is void, and the whole Burrough which is to bear the Charge, ought to chuſe; for though as to private concerns of Corporations created by the King, he may reſtrain them as he pleaſes, yet he cannot in their Choice of Burgeſſes, which concerns the Legiſlative power: for if he can make new Corporations with ſuch Clauſes, then admit the King ſhould create 300 ſuch, and one of his naming to chuſe them, there would be 600 in effect of the Kings naming, then the King can make as many Lords as he pleaſes; the conſequence whereof is plain: but it was agreed, that by Preſcription Freemen, owners of Burgage-houſes, or other ſelect number of men, may chuſe, and do ſo legally.

Mr. *Rotherham* is choſen by the major part of the Burgeſſes in general.
Sir *Thomas Harvey* and Mr. *Jermyn*, by the major part of the ſelect number.